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09/682,142	07/26/2001	Timothy M. Sivavec	RD-28314	2727

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EXAMINER	
MICHELL, KATHERINE W	
ART UNIT	PAPER NUMBER

3677

DATE MAILED: 03/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,142

Applicant(s)

SIVAVEC ET AL.

Examiner

Katherine W Mitchell

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 February 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-35 and 44-66 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-35,44-66 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 01 July 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). 12.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-35, and 44-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPA's "Field Applications of In Situ Remediation Technologies: Permeable Reactive Barriers", April 1999, hereafter the PRB papers, in view of Misquitta US Patent 5639380.

Re claims 1 and 44: The PRB papers teach a method comprising conducting a PRB treatment of a contaminated aqueous medium and in-well monitoring effectiveness of the PRB treatment in the Introduction pages 1-2 and pages 5, 7, 13, 20, 34, 36, 37. Multiple other teachings are throughout also. Examiner notes that the PRB papers in page 36 paragraph 1 and page 74 paragraph 2 for example, teach that dedicated in-situ flow sensors and ground water monitoring wells are installed to track performance. Misquitta teaches in-well monitoring and wireless transmission to a remote collector or monitor in Figs 5 and 10 and col 6 lines 47-60. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the PRB papers to include in-well monitoring and wireless transmission as taught by Misquitta in order to obtain accurate and dynamic readings of groundwater parameters with a minimum of on-site manpower.

Re claims 15-16: The PRB papers teach monitoring based on both pH and Eh (oxidation-reduction potential) in page 13 paragraph 3. Pages 19-20 teach a site in South Carolina where both pH and eH were monitored to determine effectiveness of remediation.

Re claim 17: Reactive material (zero valent iron) in the barrier zone is taught by the PRB papers page 5, 4th paragraph and in general on page 2 paragraphs 2-3.

Re claims 18-19: the PRB papers teach forming the PRB by digging a trench and placing reactive material within the trench and conducting PRB treatment within the trench, with the trench in the path of the contaminated plume on page 2 paragraph 4.

Re claims 45-46: Misquitta teaches a monitor in col 6 lines 47-60 and the abstract. Absent any criticality, the location of the monitor outside the PRB would be an obvious design choice, and be particularly likely if the PRB contained hazardous or damaging chemicals. Note that Misquitta states the obvious, in col 5 line 64 – col 6 line 6, that the test setup can be inside or outside the contaminated area based on site conditions. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the PRB papers to include the location of the monitor outside the PRB as taught by Misquitta in order to allow easy, safe, and remote monitoring of possibly hazardous conditions.

Re claims 2-14, 20-30, and 47-54: the PRB papers teach up-gradient and down-gradient monitoring wells in page 5 paragraph 5 and multiple other occurrences. Page 61 paragraph 6 teaches monitoring wells located along a transect of the PRB zone. Pages 24-25 teach a 6' wide PRB and teaches that the wells placed are along the

upgradient face, the center, and the downgradient face, thus within 25 and 6 feet up-and down-gradient of the PRB and including wells within 2 feet of the PRB or within the PRB. A plurality of sensors is taught in page 13, "Results" in that pH and VOC concentrations were measured, and page 37 paragraph 5 teaches water level monitoring, thus at least 2 sensors were used. As discussed above, Misquitta teaches in-well monitoring and wireless transmission to a remote collector or monitor.

Monitoring wells have an open screen interval to allow the monitored fluid to flow into the well, as disclosed the PRB papers page 42 paragraph 4 and page 24 bottom paragraph- page 25 top paragraph. Designing the system to meet site requirements is taught in paragraphs 2-4 on page 91 and paragraphs 1-4 on page 20, and would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have located the monitoring wells with in-well sensors in certain locations relative to the contamination, both vertically and horizontally, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Examiner notes that routine experimentation, based on contamination levels and types, site conditions and limitations, soil permeability, and other factors known to influence remediation work, would be routinely required in any remediation or site assessment project, and notes that the PRB papers on page 7 paragraph teach that additional wells are determined based on pilot studies. Adjusting the treatment based on monitoring data is taught by the PRB papers on page 20 paragraphs 1-4, page 42, pages 93-94,

and the bottom paragraph of page 39, and Misquitta in Fig 6. The method is obvious in the system description and usage.

Re claims 31-35 and 55-62: A transmitter, collector to receive a signal from the transmitter and capable of transmitting a signal to a monitor, and a communication link between said collector and monitor and the method of monitoring and transmitting contaminant data is taught in Misquitta in col 6 lines 47-60 and col 7 lines 7-21. Col 8 lines 14-40 teach wireless interconnected {web} communication links using radio communications. Transmission of data implies a remote monitor. Two way communication is taught by Misquitta in col 6 line 61- col 7 line 1, Fig 6, and col 10 lines 41-46. Outputting a contaminant report is taught by Misquitta in col 7 lines 40-49 and col 10 lines 35-36. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the PRB papers to include a transmitter, a collector to receive a signal from the transmitter and capable of transmitting a signal to a monitor, and a communication link between said collector and monitor as taught by Misquitta in order to automate the monitoring process and obtain "real-time" data and process corrections as elaborated in col 10 lines 41-46 and allow easy, safe, and remote monitoring of possibly hazardous conditions using off-the-shelf and known equipment.

Re claim 63: the PRB papers teach chemical sensors in 1st paragraph on page 20 and page 34. Misquitta teaches chemical sensors in col 7 lines 4-7.

Re claims 64-65: A plurality of sensors in a plurality of wells {a plurality of monitoring wells with sensors} arranged along a substantially longitudinal axis of the

PRB zone facing the fluid flow (AA-116,115, and 113) and substantially along a transect to the PRB zone (AA-111,112,113, and 114) is taught in Fig. 1.

Re claim 66: A PRB and a sensor located along a substantially longitudinal axis of the PRB zone facing the fluid flow or substantially along a transect to the PRB zone is taught in the PRB papers on page 61 paragraph 6. As discussed above, Misquitta teaches in-well monitoring and wireless transmission to a remote collector or monitor. Examiner notes it would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have located the sensor and well in the specific area where data is best generated, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

3. Claims 1–35, and 44–66 are rejected under 35 U.S.C. 103(a) as being unpatentable over the US Army Corps of Engineers, DG 1110-345-117, "Design Guidance for Application of Permeable Barriers to Remediate Dissolved Chlorinated Solvents" Proponent: CEMP, Feb 97, 192 pages, hereafter the Corps of Engineers papers, in view of Misquitta US Patent 5639380.

Re claims 44–46: The Corps of Engineers papers teach a method comprising conducting a PRB treatment of a contaminated aqueous medium and in-well monitoring effectiveness of the PRB treatment in Sections 1,7,8, and Appendix A and E. Examiner notes specifically Corps of Engineers papers section 8.2.1 on page 82 and page 81 section 8.1.2 and section 3.3.1 page 26. The Corps of Engineers papers teach all the elements except a remote monitor, in-well sensor, and wireless transmitter. Misquitta

teaches in-well monitoring and wireless transmission to a remote collector or monitor in Figs 5 and 10 and col 6 lines 47-60. Absent any criticality, the location of the monitor outside the PRB would be an obvious design choice, and be particularly likely if the PRB contained hazardous or damaging chemicals. Note that Misquitta states the obvious, in col 5 line 64 – col 6 line 6, that the test setup can be inside or outside the contaminated area based on site conditions. Absent any criticality, the location of the monitor outside the PRB would be an obvious design choice, and be particularly likely if the PRB contained hazardous or damaging chemicals. Note that Misquitta states the obvious, in col 5 line 64 – col 6 line 6, that the test setup can be inside or outside the contaminated area based on site conditions. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Corps of Engineers papers to include the location of the monitor outside the PRB and remote monitoring of wireless transmissions from in-well sensors as taught by Misquitta in order to allow easy, safe, and remote monitoring of possibly hazardous conditions

Re claim 17: Reactive material (zero valent iron especially) in the barrier zone is taught by the Corps of Engineers papers on pages 28-32.

Re claims 18-19: the Corps of Engineers papers in Executive Summary paragraph 4, page V teach forming the PRB by digging a trench and placing reactive material within the trench and conducting PRB treatment within the trench, with the trench in the path of the contaminated plume.

Re claims 1—14, 20-30 and 47-54: The Corps of Engineers papers teach a method comprising conducting a PRB treatment of a contaminated aqueous medium

and in-well monitoring effectiveness of the PRB treatment in Sections 1,7,8, and Appendix A and E. Examiner notes specifically Corps of Engineers papers section 8.2.1 on page 82 and page 81 section 8.1.2 and section 3.3.1 page 26. The Corps of Engineers papers teach up-gradient and down-gradient monitoring wells in paragraph 3 page 56. Fig. 8.1 teaches monitoring wells located along a transect of the PRB zone. A plurality of sensors is taught in page 26, paragraph 2 and page 81 paragraph 2. Monitoring wells have an open screen interval to allow the monitored fluid to flow into the well, as disclosed the Corps of Engineers papers section 8. Designing the system to meet site requirements is taught in first paragraph page vii and section 1.8 page 9 and paragraph 5 page 48. The Corps of Engineers papers teach all the elements except a remote monitor, in-well sensor, and wireless transmitter. Misquitta teaches in-well monitoring and wireless transmission to a remote collector or monitor in Figs 5 and 10 and col 6 lines 47-60. Examiner notes that routine experimentation, based on contamination levels and types, site conditions and limitations, soil permeability, and other factors known to influence remediation work, would be routinely required in any remediation or site assessment project, and notes that the page 84 paragraph 1 of Corps of Engineers papers teach that additional wells are determined based on pilot studies. Adjusting the treatment based on monitoring data is taught by section 8 and the Executive Summary, and Misquitta in Fig 6. The method is obvious in the system description and usage. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have located the monitoring wells with in-well sensors and wireless transmission to remote monitoring stations, as taught by

Misquitta, in order to allow easy, safe, and remote monitoring of possibly hazardous conditions, and it would be also obvious to locate the wells in certain locations, such as within 2, 6, or 25 feet of the PRB relative to the contamination, both vertically and horizontally, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Re claims 15-16: The Corps of Engineers papers in page 81 section 8.1.2 and section 3.3.1 page 26 teach monitoring based on pH and Eh (redox potential) and that it is very important to do so.

Re claims 31-35 and 55-62: A transmitter, collector to receive a signal from the transmitter and capable of transmitting a signal to a monitor, and a communication link between said collector and monitor and the method of monitoring and transmitting contaminant data is taught in Misquitta in col 6 lines 47-60 and col 7 lines 7-21. Col 8 lines 14-40 teach wireless interconnected {web} communication links using radio communications. Transmission of data implies a remote monitor. Two way communication is taught by Misquitta in col 6 line 61- col 7 line 1, Fig 6, and col 10 lines 41-46. Outputting a contaminant report is taught by Misquitta in col 7 lines 40-49 and col 10 lines 35-36.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Corps of Engineers papers to include a transmitter, a collector to receive a signal from the transmitter and capable of transmitting a signal to a monitor, and a communication link between said collector and

monitor as taught by Misquitta in order to automate the monitoring process and obtain "real-time" data and process corrections as elaborated in col 10 lines 41-46 and allow easy, safe, and remote monitoring of possibly hazardous conditions using off-the-shelf and known equipment.

Re claim 63: Corps of Engineers papers teach in-well chemical sensors in page 81 section 8.1.2 and section 3.3.1 page 26. Misquitta teaches chemical sensors in col 7 lines 4-7.

Re claims 64-65: A plurality of sensors in a plurality of wells {a plurality of monitoring wells with sensors} arranged along a substantially longitudinal axis of the PRB zone facing the fluid flow and substantially along a transect to the PRB zone is taught in Fig. 8.1, sections 8.1.1 - 8.1.3, pages 76-82 and sections 3.3, 3.3.1, and 3.3.2, pages 26-27 of the Corps of Engineers papers.

Re claim 66: A PRB and a sensor located in a monitoring well located along a substantially longitudinal axis of the PRB zone facing the fluid flow or substantially along a transect to the PRB zone is taught in the Corps of Engineers papers Fig 8.1 and section 8. Misquitta's teaching of in-well sensors has been previously cited. Examiner notes it would have been considered obvious to one of ordinary skill in the art, at the time the invention was made, to have located the sensor and well in the specific area where data is best generated, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

4. Applicant's arguments with respect to claims 1-35 and 44-66 have been considered but are moot in view of the new ground(s) of rejection.
5. In response to applicant's argument that Misquitta is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, examiner is using Misquitta, a method and system of monitoring groundwater treatment, for the specifics of the monitoring method. How Misquitta remediated the groundwater is not applied to the applicant's claims or the primary references, and examiner is not combining two treatment methods, but a monitoring system of a groundwater treatment system with a groundwater treatment system. Groundwater treatment monitoring systems would be a logical area to investigate options for groundwater treatment monitoring systems.
6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Misquitta

specifies that automation is a benefit for remediation projects in col 2 lines 40-42, and examiner notes that costs for labor and manpower are a factor always considered in long-term projects, especially when the site is likely to be remote and hazardous, as contaminated sites usually are, as disclosed in col 8 lines 25-29.

7. Examiner has specifically quoted Misquitta's in-well monitoring and wireless transmission. The fact that additional embodiments are disclosed is irrelevant.

8. Examiner is no longer applying Salvo and is relying on the cited base references for claims 15-16.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W Mitchell whose telephone number is 703-305-6713. The examiner can normally be reached on Tues-Fri 9 AM - 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-308-8623 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

kwm
March 6, 2003


J. J. SWANN
SUPERVISORY PATENT EXAMINER
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